

2013 DRAFTING REQUEST

Bill

Received: **3/6/2013** Received By: **gmalaise**
Wanted: **As time permits** Same as LRB:
For: **Stephen Smith (608) 266-2519** By/Representing: **Christian Plata**
May Contact: Drafter: **gmalaise**
Subject: **Employ Priv - discrimination** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Smith@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Employment discrimination on basis of military service; compensatory and punitive damages

Instructions:

See attached--redraft 11-4345/1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 3/6/2013	kfollett 3/25/2013	jmurphy 3/25/2013	_____			
/1				_____	mbarman 5/8/2013	mbarman 5/8/2013	State

FE Sent For:

<END>

→ A+
Intro.

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(see attached)

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re-submitted
via e-mail

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Received: **3/6/2013** Received By: **gmalaise**
Wanted: **As time permits** Same as LRB:
For: **Christine Sinicki (608) 266-8588** By/Representing: **Mary Beth George**
May Contact: Drafter: **gmalaise**
Subject: **Employ Priv - discrimination** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Sinicki@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Employment discrimination on basis of military service; compensatory and punitive damages

Instructions:

See attached--redraft 11-4345/1

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Received: 3/6/2013 Received By: gmalaise
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 For: Christine Sinicki (608) 266-8588 By/Representing: Mary Beth George
 May Contact: Drafter: gmalaise
 Subject: Employ Priv - discrimination Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.Sinicki@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

✓ jmc 3/25
 Employment discrimination on basis of military service; compensatory and punitive damages

Instructions:

See attached--redraft 11-4345/1

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/? gmalaise

115f
 3/25 jmc 3/25 self

FE Sent For:

<END>

Malaise, Gordon

From: George, Mary Beth
Sent: Wednesday, March 06, 2013 2:16 PM
To: Malaise, Gordon
Attachments: 11-43451.pdf; 11-43451dn.pdf

Hi Gordon –

Would you please redraft this for this session?

Thanks!

Mary Beth G.

Office of Rep. Christine Sinicki
20th Assembly District
608-266-8588



State of Wisconsin
2011 - 2012 LEGISLATURE

In 3/6



-1818/

LRB-43484

GMM:kjf:jf

2011 BILL

LPS: Fix request sheet please ✓ 3/25

PWF 3/25

Regen

- 1 AN ACT *to amend* 111.39 (4) (d) and 814.04 (intro.); and *to create* 111.39 (5) (d),
2 111.397 and 893.995 of the statutes; **relating to:** authorizing the circuit court
3 to order a person who engages in discrimination in employment on the basis of
4 military service to pay compensatory and punitive damages.

Analysis by the Legislative Reference Bureau

Current law prohibits employment discrimination on the basis of military service, which is defined as service in the U.S. armed forces, the state defense force, the national guard of any state, or any other reserve component of the U.S. armed forces. Also, current law specifies that employment discrimination on the basis of military service includes discriminating against an individual because the individual is or applies to be a member of the U.S. armed forces, the state defense force, the national guard of any state, or any reserve component of the U.S. armed forces or because the individual performs, has performed, applies to perform, or has an obligation to perform military service. Current law provides, however, that it is not employment discrimination on the basis of military service to refuse to hire, employ, or license an individual or to bar or terminate an individual from employment or licensure because the individual has been less than honorably discharged from military service and the circumstances of the discharge substantially relate to the circumstances of the particular job or licensed activity.

Under current law, a person alleging discrimination in employment on the basis of military service may file a complaint with the Department of Workforce Development (DWD) seeking action that will effectuate the purpose of the

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employment discrimination law, including reinstating the complainant, providing back pay, and paying costs and attorney fees. Current law, however, does not authorize DWD to award compensatory or punitive damages to a complainant.

This bill permits DWD or a person who has been discriminated against on the basis of military service to bring an action in circuit court to recover compensatory and punitive damages caused by the act of discrimination, plus reasonable costs and attorney fees incurred in the action, after the completion of all administrative proceedings before DWD and the Labor and Industry Review Commission concerning the violation. Those damages are in addition to any back pay or other amounts awarded in the administrative proceeding. The bill, however, does not permit an action for damages to be brought against any local governmental unit or against any employer employing fewer than 15 individuals.

Under the bill, if the circuit court finds that a defendant has discriminated on the basis of military service, the circuit court must order the defendant to pay to the person discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate, subject to the limitations, as follows:

1. If the defendant employs 100 or fewer employees, \$50,000.
2. If the defendant employs more than 100 but fewer than 201 employees, \$100,000.
3. If the defendant employs more than 200 but fewer than 501 employees, \$200,000.
4. If the defendant employs more than 500 employees, \$300,000.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

①

SECTION 1. 111.39 (4) (d) of the statutes, ~~as affected by 2011 Wisconsin Act 219,~~

is amended to read:

111.39 (4) (d) The department shall serve a certified copy of the findings and order on the respondent, the order to have the same force as other orders of the department and be enforced as provided in s. 103.005. Any person aggrieved by noncompliance with the order may have the order enforced specifically by suit in equity. If the examiner finds that the respondent has not engaged in discrimination, unfair honesty testing, or unfair genetic testing as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the

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1 complainant, together with an order dismissing the complaint. If the examiner finds
2 that the respondent has engaged in discrimination on the basis of military service
3 as alleged in the complaint, the department shall serve a certified copy of the
4 examiner's findings on the complainant, together with a notice advising the
5 complainant that after the completion of all administrative proceedings under this
6 section he or she may bring an action as provided in s. 111.397 (1) (a) to recover
7 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the
8 complainant of the time under s. 111.397 (1) (b) within which the action must be
9 commenced or be barred.

10 **SECTION 2.** 111.39 (5) (d) of the statutes is created to read:

11 111.39 (5) (d) If the commission affirms a finding that the respondent has
12 engaged in discrimination on the basis of military service as alleged in the complaint,
13 the commission shall serve a certified copy of the commission's decision on the
14 complainant, together with a notice advising the complainant that after the
15 completion of all administrative proceedings under this section he or she may bring
16 an action as provided in s. 111.397 (1) (a) to recover compensatory and punitive
17 damages as provided in s. 111.397 (2) (a) and advising the complainant of the time
18 under s. 111.397 (1) (b) within which the action must be commenced or be barred.

19 **SECTION 3.** 111.397 of the statutes is created to read:

20 **111.397 Civil action.** (1) (a) Except as provided in this paragraph, after the
21 completion of all administrative proceedings under s. 111.39 concerning a violation
22 of s. 111.321 on the basis of military service, the department or person discriminated
23 against may bring an action in circuit court against any employer, labor
24 organization, or employment agency that engaged in that discrimination to recover
25 compensatory and punitive damages caused by the violation, plus reasonable costs

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1 and attorney fees incurred in the action. Those damages are in addition to any back
2 pay or other amounts awarded under s. 111.39. The department or person
3 discriminated against may not bring an action under this paragraph against any
4 local governmental unit, as defined in s. 19.42 (7u), or against any employer, labor
5 organization, or employment agency employing fewer than 15 individuals for each
6 working day in each of 20 or more calendar weeks in the current or preceding year.

7 (b) An action under par. (a) shall be commenced within 60 days after the date
8 on which a copy of the final decision under s. 111.39 (4) (d) is mailed to the last-known
9 address of the complainant or, if that decision is reviewed by the commission, within
10 60 days after the date on which a copy of the final decision under s. 111.39 (5) (d) is
11 mailed to the last-known address of the complainant, or be barred.

12 (c) If a petition for judicial review of the findings and order of the commission
13 concerning the same violation as the violation giving rise to the action under par. (a)
14 is filed, the court shall consolidate the proceeding for judicial review and the action
15 under par. (a).

16 (2) (a) Subject to pars. (b) and (c), in an action under sub. (1) (a), the circuit court
17 shall order the defendant to pay to the person discriminated against compensatory
18 damages, and punitive damages under s. ~~895.096~~ ^{895.043}, in an amount that the circuit court
19 or jury finds appropriate, plus reasonable costs and attorney fees incurred in the
20 action. Those damages are in addition to any back pay or other amounts awarded
21 under s. 111.39. The sum of the amount of compensatory damages for future
22 economic losses and for pain and suffering, emotional distress, mental anguish, loss
23 of enjoyment of life, and other noneconomic losses and the amount of punitive
24 damages that a circuit court may order may not exceed the following:

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1 1. In the case of a defendant that employs 100 or fewer employees for each
2 working day in each of 20 or more calendar weeks in the current or preceding year,
3 \$50,000.

4 2. In the case of a defendant that employs more than 100 but fewer than 201
5 employees for each working day in each of 20 or more calendar weeks in the current
6 or preceding year, \$100,000.

7 3. In the case of a defendant that employs more than 200 but fewer than 501
8 employees for each working day in each of 20 or more calendar weeks in the current
9 or preceding year, \$200,000.

10 4. In the case of a defendant that employs more than 500 employees for each
11 working day in each of 20 or more calendar weeks in the current or preceding year,
12 \$300,000.

13 (b) If the circuit court orders any payment under par. (a) because of a violation
14 by an individual employed by an employer, the employer of that individual is liable
15 for the payment.

16 (c) 1. In this paragraph, "consumer price index" means the average of the
17 consumer price index for all urban consumers, U.S. city average, as determined by
18 the bureau of labor statistics of the federal department of labor.

19 2. Except as provided in this subdivision, beginning on July 1, 2014, and on
20 each July 1 after that, the department shall adjust the amounts specified in par. (a)
21 1., 2., 3., and 4. by calculating the percentage difference between the consumer price
22 index for the 12-month period ending on December 31 of the preceding year and the
23 consumer price index for the 12-month period ending on December 31 of the year
24 before the preceding year and adjusting those amounts by that percentage
25 difference. The department shall publish the adjusted amounts calculated under

BILL

1 this subdivision[✓] in the Wisconsin Administrative Register, and the adjusted amounts
2 shall apply to actions commenced under sub. (1) (a)[✓] beginning on July 1 of the year
3 of publication. This subdivision[✓] does not apply if the consumer price index for the
4 12-month period ending on December 31 of the preceding year did not increase over
5 the consumer price index for the 12-month period ending on December 31 of the year
6 before the preceding year.

7 **SECTION 4.** 814.04 (intro.) of the statutes[✓] as affected by 2011 Wisconsin Acts
8 118 and 219[✓] is amended to read:

9 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
10 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a)[✓], 115.80 (9), 767.553 (4) (d),
11 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3),
12 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3),
13 when allowed costs shall be as follows:

14 **SECTION 5.** 893.995 of the statutes[✓] is created to read:

15 **893.995 Employment discrimination; civil remedies.** Any civil action[✓]
16 arising under s. 111.397[✓] is subject to the limitations of s. 111.397 (1) (b).[✓]

17 **SECTION 6. Initial applicability.**

18 (1) EMPLOYMENT DISCRIMINATION ON THE BASIS OF MILITARY SERVICE; DAMAGES. This
19 act first applies to acts of employment discrimination on the basis of military service
20 committed on the effective date of this subsection.[✓]

21 (END)

Barman, Mike

From: Malaise, Gordon
Sent: Thursday, April 25, 2013 12:15 PM
To: Barman, Mike
Cc: Packnett, Greg
Subject: FW: LRB 1818

Mike:

See below. Rep. Sinicki has released LRB-1818 to Rep. Smith. So if Rep. Smith wants -1818 jacketed, he has Rep. Sinicki's permission.

gordon

From: Packnett2, Greg
Sent: Thursday, April 25, 2013 11:34 AM
To: Malaise, Gordon
Cc: Plata, Christian
Subject: LRB 1818

Gordon,

Rep. Sinicki would like to release LRB 1818 regarding employment discrimination on the basis of military service to Rep. Smith. Please let me know if you have any questions.

Thank you,
Greg Packnett
Office of Rep. Christine Sinicki

Barman, Mike

From: Barman, Mike
Sent: Wednesday, May 08, 2013 10:53 AM
To: Malaise, Gordon
Subject: RE: Submitted: LRB -1818/1 Topic: Employment discrimination on basis of military service; compensatory and punitive damages?body=

Per your request I submitted this draft (via email) to Rep.Smith back on April 25th. I'll go ahead and send it again.

MB

From: Malaise, Gordon
Sent: Wednesday, May 08, 2013 10:33 AM
To: Barman, Mike
Subject: FW: Submitted: LRB -1818/1 Topic: Employment discrimination on basis of military service; compensatory and punitive damages?body=

Mike:

Rep. Sinicki wants LRB-1818 to be released to Rep. Smith.

Gordon

From: Packnett2, Greg
Sent: Wednesday, May 08, 2013 10:30 AM
To: Malaise, Gordon
Subject: Submitted: LRB -1818/1 Topic: Employment discrimination on basis of military service; compensatory and punitive damages?body=

Gordon,

We released this bill to Rep. Smith's office a bit ago and they're saying they did not receive the draft review email from the LRB about it. I tried forwarding this one, but that's not allowed. Would LRB be able to send this email over there?

Thanks,
Greg

Barman, Mike

From: Plata, Christian
Sent: Wednesday, May 08, 2013 10:55 AM
To: LRB.Legal
Subject: Draft Review: LRB -1818/1 Topic: Employment discrimination on basis of military service; compensatory and punitive damages

Please Jacket LRB -1818/1 for the ASSEMBLY.

Thank you